

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation
Against:

KERRY LYNNE PENNELL
a.k.a. KERRY LYNN PENNELL
a.k.a. KERRY LYNNE DALFIO
3617 Fireway Drive
San Diego, CA 92111

Registered Nurse License No. 443438

Respondent

Case No. 2012-301

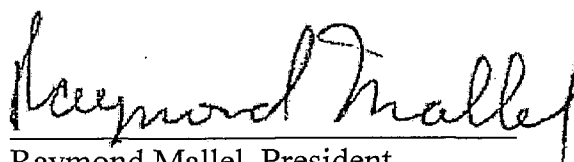
OAH No. 20111200114

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **November 21, 2012.**

IT IS SO ORDERED **November 21, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Attorney General of California
2 JAMES M. LEDAKIS
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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-301

12 **KERRY LYNNE PENNELL, AKA KERRY**
13 **LYNN PENNELL AKA KERRY LYNNE**
DALFIO
14 **3617 Fireway Drive**
San Diego, CA 92111

OAH No. 20111200114

STIPULATED SURRENDER OF
LICENSE AND ORDER

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16 **Registered Nurse License No. 443438**

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18 Respondent.

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20 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
21 proceeding that the following matters are true:

22 PARTIES

23 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
24 Board of Registered Nursing. She brought this action solely in her official capacity and is
25 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
26 Desiree I. Kellogg, Deputy Attorney General.

27 2. Kerry Lynne Pennell, aka Kerry Lynn Pennell, aka Kerry Lynne Dalfio (Respondent)
28 is representing herself in this proceeding and has chosen not to exercise her right to be
represented by counsel.

3. On or about August 31, 1989, the Board of Registered Nursing issued Registered Nurse License No. 443438 to Kerry Lynne Pennell, aka Kerry Lynn Pennell, aka Kerry Lynne Dalfio (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 2012-301 and will expire on November 30, 2012, unless renewed.

JURISDICTION

4. First Amended Accusation No. 2012-301 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 9, 2011 and the First Amended Accusation and all other statutorily required documents were properly served on Respondent on July 19, 2012. Respondent timely filed her Notice of Defense contesting the Accusation and the First Amended Accusation. A copy of First Amended Accusation No. 2012-301 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in First Amended Accusation No. 2012-301. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws:

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 443438 issued to Respondent Kerry Lynne Pennell, aka Kerry Lynn Pennell aka Kerry Lynne Dalfio, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

2. Respondent shall lose all rights and privileges as a registered nurse in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 2012-301 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If and when Respondent's license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$4,795.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in First Amended Accusation, No. 2012-301 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

7/22/12

Kerry Lynne Pennell

KERRY LYNNE PENNELL, AKA KERRY
LYNN PENNELL AKA KERRY LYNNE
DALFIO
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

7/31/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. DEDAKIS
Supervising Deputy Attorney General

DESIREE L. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 2012-301

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
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3 DESIREE I. KELLOGG
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11 In the Matter of the Accusation Against:

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12 **KERRY LYNNE PENNELL**
13 **aka KERRY LYNN PENNELL**
aka KERRY LYNNE DALFIO
14 **3617 Fireway Drive**
San Diego, CA 92111

FIRST AMENDED ACCUSATION

15 **Registered Nurse License No. 443438**

16 Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs.

24 2. On or about August 31, 1989, the Board of Registered Nursing issued Registered
25 Nurse License Number 443438 to Kerry Lynne Pennell, aka Kerry Lynn Pennell, aka Kerry
26 Lynne Dalfio (Respondent). The Registered Nurse License was in full force and effect at all
27 times relevant to the charges brought herein and will expire on November 30, 2012, unless
28 renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

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1 8. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse
3 or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

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7 (f) Conviction of a felony or of any offense substantially related to the
8 qualifications, functions, and duties of a registered nurse, in which event the record
9 of the conviction shall be conclusive evidence thereof."

10 9. Section 2762 of the Code states:

11 In addition to other acts constituting unprofessional conduct within the
12 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
13 a person licensed under this chapter to do any of the following:

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15 (b) Use any controlled substance as defined in Division 10 (commencing
16 with Section 11000) of the Health and Safety Code, or any dangerous drug or
17 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
18 or in a manner dangerous or injurious to himself or herself, any other person, or
19 the public or to the extent that such use impairs his or her ability to conduct with
20 safety to the public the practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription,
22 consumption, or self-administration of any of the substances described in
23 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
24 record pertaining to, the substances described in subdivision (a) of this section, in
25 which event the record of the conviction is conclusive evidence thereof."

26 10. California Code of Regulations, title 16, section 1444, states:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those
violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to
Section 290 of the Penal Code.

1 11. California Code of Regulations, title 16, section 1445, states:

2

3 (b) When considering the suspension or revocation of a license on the
4 grounds that a registered nurse has been convicted of a crime, the board, in
5 evaluating the rehabilitation of such person and his/her eligibility for a license will
6 consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with any terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 (5) If applicable, evidence of expungement proceedings pursuant to Section
13 1203.4 of the Penal Code.

14 (6) Evidence, if any, of rehabilitation submitted by the licensee.

15 **COST RECOVERY**

16 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(December 2, 2004 Criminal Conviction for Driving Under the Influence of Alcohol**
22 **With BAC of 0.08% or More [0.21%] on September 11, 2004)**

23 13. Respondent is subject to disciplinary action under Code sections 490 and 2761,
24 subdivision (f), for a criminal conviction that is substantially related to the qualifications,
25 functions, and duties of a registered nurse. The circumstances are as follows:

26 14. On or about December 2, 2004, in a criminal proceeding entitled *The People of the*
27 *State of California v. Kerry Lynne Pennell*, in the Superior Court of California, County of San
28 Diego, East County Division, in Case No. C244116, Respondent was convicted, on her plea of
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1 guilty, of violating Vehicle Code section 23152(b) (driving under the influence of alcohol with a
2 blood alcohol content of 0.08% or more [0.21%]), a misdemeanor.

3 15. As a result of the above conviction, Respondent was placed on five (5) years
4 summary probation and ordered to pay various fees and fines, ordered to serve four days in the
5 Public Service Work Program with two days credit for time served, not drive with a measurable
6 amount of alcohol and/or drugs, submit to any test as directed by a peace officer for the detection
7 of alcohol/drugs in her system, and violate no laws regarding driving a motor vehicle while under
8 the influence of alcohol or drugs. The Court also ordered Respondent to attend and complete a
9 three-month First Conviction Program, complete a MADD program by March 2, 2005, and
10 restricted Respondent's license for 90 days.

11 16. The circumstances that led to the above conviction are that on September 11, 2004,
12 Respondent was arrested by law enforcement officers for driving a motor vehicle while under the
13 influence of alcohol. Respondent's BAC was measured at 0.21%.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (April 10, 2008 Criminal Conviction for Driving Under the Influence of Alcohol with Blood
16 Alcohol Level of 0.08% or More [0.18%] on February 6, 2008)

17 17. Respondent is subject to disciplinary action under Code sections 490 and 2761,
18 subdivision (f), for a criminal conviction that is substantially related to the qualifications,
19 functions, and duties of a registered nurse. The circumstances are as follows:

20 18. On or about April 10, 2008, in a criminal proceeding entitled *The People of the State*
21 *of California v. Kerry Lynne Pennell*, in the Superior Court of California, County of San Diego,
22 East County Division, in Case No. C278075, Respondent was convicted, on her plea of guilty, of
23 violating Vehicle Code section 23152(b) (driving under the influence of alcohol with a blood
24 alcohol content of 0.08% or more [0.18%]), a misdemeanor, with the following enhancements:
25 Violation of Vehicle Code sections 23540 (prior DUI within 10 years), and 23578 (driving with a
26 blood alcohol concentration of 0.15% or more).

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1 19. As a result of the above conviction, Respondent was placed on five (5) years
2 summary probation and ordered to serve 30 days in the county jail, with two days credit for time
3 served, with the custody time to be done four days at a time consecutive weeks until completed.
4 The Court also ordered Respondent to pay various fines and fees, given the standard alcohol
5 conditions per Vehicle Code section 23600, enroll and complete a Multiple Conviction Program
6 which included attendance at AA meetings, complete a MADD program, and to show proof of
7 completion by July 11, 2008. The Court further ordered Respondent to attend two (2) AA
8 meetings per week for a period of 12 months, for a total of 96 meetings, and to show proof of
9 such attendance every 60 days.

10 20. The circumstances that led to the above conviction are that on February 6, 2008, at
11 approximately 2231 hours, California Highway Patrol officers observed Respondent driving a
12 vehicle in the #2 lane of State Route 67 north of Riverford Road in San Diego County. The
13 vehicle was traveling at approximately 80 mph. Officers positioned their patrol vehicle directly
14 behind Respondent's vehicle and began to pace Respondent past Riverford Road. Respondent's
15 vehicle's speed varied from 85 to 90 mph from Riverford Road to Woodside Avenue. A traffic
16 stop was initiated. Officers observed Respondent's vehicle weaving from side to side within the
17 traffic lane and was slow to respond to the emergency lights, and eventually yielded to the right
18 shoulder.

19 21. When officers made contact with Respondent via the opened right front window, they
20 could smell the odor of an alcoholic beverage emitting from within the vehicle. Respondent's
21 speech was slow and slurred. Officers asked Respondent if she had been drinking, and
22 Respondent told officers that she had a couple of beers at a casino. Officers observed
23 Respondent's eyes were glassy and droopy. Officers directed Respondent to exit her vehicle and
24 was observed to walk with an unsteady gait and unsteady on her feet. Officers could smell the
25 odor of an alcoholic beverage on Respondent's breath. A field sobriety test was performed and
26 the results were consistent with a person who was under the influence of an alcoholic beverage.
27 Based on Respondent's driving, her signs and symptoms of alcohol intoxication, and the results
28 of the field sobriety test, officers formed the opinion that Respondent was driving under the

1 influence of alcohol and was placed under arrest. Respondent submitted to a breath test and the
2 results came back at 0.18%/0.19%. Respondent was booked at the Las Colinas Women's
3 Detention Facility.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Use of Alcohol in a Manner Dangerous or Injurious to Self or Others)**

6 22. Respondent is subject to disciplinary action under Code sections 2761, subdivision
7 (a), and 2762, subdivision (b), in that Respondent used alcohol to an extent or in a manner
8 dangerous or injurious to herself, as is more fully set forth in paragraphs 13 through 21, above,
9 which are incorporated here by reference and as is set forth in paragraph 23 below.

10 23. On or about June 1, 2012, Respondent drove westbound on I-8 and stopped at the
11 Border Patrol Checkpoint west of Buckman Springs Road. The border patrol officer contacted
12 Respondent and smelled the odor of an alcoholic beverage emitting from her vehicle. He
13 instructed her to wait at the secondary inspection area. A California Highway Patrol Officer
14 contacted Respondent in her vehicle at the secondary inspection area. He smelled the odor of an
15 alcoholic beverage emitting from her breath and observed that Respondent's eyes were red and
16 glassy and her speech was slightly slurred. Respondent told the officer that she had drunk a
17 couple of Vodka beverages from 2:00 p.m. to 7 p.m. and a tall glass of beer at 12:30 p.m. The
18 officer also observed a plastic cup containing Vodka in her vehicle which Respondent told the
19 officer that she had been drinking in her vehicle. He administered a Field Sobriety Test to
20 Respondent which she failed. Based on the California Highway Patrol officer's observations of
21 her signs and symptoms of alcohol intoxication, her admissions that she had been drinking
22 alcohol and the results of the field sobriety test, the officer formed the opinion that Respondent
23 was driving under the influence of alcohol and placed Respondent under arrest. Respondent
24 submitted to a breath test and the results of her Preliminary Alcohol Screen showed a blood
25 alcohol content of .191 and .208. She also submitted to a blood alcohol test which measured her
26 blood alcohol content at .20. Respondent was booked into custody at Las Colinas Women's
27 Detention Facility. Criminal misdemeanor charges have been filed against Respondent in *The*
28 *People of the State of California v. Kerry Lynne Pennell*, San Diego County Superior Court, Case

1 No. C321919. Respondent has violated the terms of her second criminal probation with this third
2 DUI arrest and the criminal complaint filed against her.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Conviction of Alcohol Related Crimes)**

5 24. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
6 and 2762, subdivision (c), in that Respondent was convicted of a criminal offenses involving the
7 consumption of alcohol, as is more fully set forth in paragraphs 13 through 21, above, which are
8 incorporated here by reference.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 443438, issued to Kerry
13 Lynne Pennell, aka Kerry Lynn Pennell, aka Kerry Lynne Dalfio, RN.

14 2. Ordering Kerry Lynne Pennell, aka Kerry Lynn Pennell, aka Kerry Lynne Dalfio to
15 pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of
16 this case, pursuant to Business and Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: July 19, 2012

19 Louise R. Bailey
20 LOUISE R. BAILEY, M.ED., RN
21 Interim Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

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